

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/05/2001

CLERK OF THE COURT
FORM L513

HONORABLE MICHAEL D. JONES

T. Pavia
Deputy

LC 2001-000210

FILED: _____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

THOMAS JOSEPH RODRIGUEZ

LAURIE A HERMAN

FINANCIAL SERVICES-CCC
PHX MUNICIPAL CT
REMAND DESK CR-CCC

APPEAL RULING / REMAND

PHOENIX CITY COURT

Cit. No. 5892284

Charge:1: DUI Alcohol;
2: DUI W/AC OF .10 OR HIGHER;
3: FAILURE TO DIM LIGHTS FROM THE FRONT

DOB: 07-24-75

DOC: 04-20-00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court and Memoranda of counsel.

Appellant Thomas Joseph Rodriguez was arrested and charged on April 20, 2000 for Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving With a Blood Alcohol Content in Excess of .10, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and Failure to Dim Lights From the Front, a civil traffic violation in violation of A.R.S. Section 28-942.1. Appellant filed a Motion to Suppress the results of the blood alcohol content based upon his contention that the stop of his vehicle on April 20, 2000 was unlawful. Appellant's Motion was denied after a hearing. On April 4, 2001, Appellant and the State submitted the case to the Court for a determination of guilt. The trial judge found Appellant guilty of both DUI charges and responsible on the civil traffic violation. Appellant was sentenced to serve 10 days in jail and 9 days was to be suspended pending completion by Appellant by a substance abuse screening and any counseling, education or therapy which may be indicated, concurrent fines of \$443.00 for each charge, and Appellant was ordered to pay the costs of incarceration. Appellant filed a timely notice of appeal in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Phoenix Police Officers did not have a "reasonable suspicion" which would justify the stop of Appellant's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.¹ These

¹ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App.1990).

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facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides authority for police officers to conduct an "investigative detention":

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation...

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure OF "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In Whren⁴ the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code

² United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

³ Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁴ Id.

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renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An Appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review de novo the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case, the testimony clearly showed the arresting officer's belief that the Appellant had committed a civil traffic violation by failing to dim his head lights while approaching within 500 feet of another vehicle from the front, in violation of A.R.S. Section 28-942.1. Having determined then that a factual basis does exist to support the trial judge's ruling, this Court also determines de novo that said facts do establish a reasonable basis for the Phoenix Police Officers to have stopped the automobile driven by the Appellant.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Phoenix City Court.

⁵ Id.

⁶ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, Supra.

⁷ Id.

⁸ State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996)

⁹ State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. At 397, 956 P.2d at 524.

¹⁰ State v. Gonzalez-Gutierrez, 187 Ariz. At 118, 927 P.2d at 778; State v. Magner, 191 Ariz. At 397, 956 P.2d at 524.

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IT IS FURTHER ORDERED remanding this case back to the
Phoenix City Court for all future proceedings.